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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 -- Rate Regulation	)	MM Docket No. 93-215
	)	
Adoption of a Uniform Accounting System for Provision of Regulated Cable Service	)	CS Docket No. 94-28

REPLY COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) files these reply comments to focus on two aspects of the Commission's regulatory framework: the proposed affiliate transaction rules and the system of accounts to be mandated for cable companies.[1] USTA urges the Commission to take this opportunity to streamline the requirements in these two areas for both cable and telephone companies. We also briefly discuss USTA's views as to the proper approach to regulation of small cable companies.

I. INTRODUCTION

USTA is the principal trade association of the local exchange telephone

[1]On June 16, USTA filed comments responding to Petitions for Reconsideration in these same two dockets. In its comments, USTA presented its views concerning the relative risks faced by the two industries and the implications of that risk in setting a reasonable rate of return. Therefore, USTA will not repeat its position here.

industry. Its more than 1100 members provide over 98% of the local exchange access lines in the United States. Most USTA members are small companies, serving fewer than 5,000 access lines. Well over 200 of USTA's members also have interests, of varying types, in cable companies.

The Commission has taken a needed step toward streamlining regulation by proposing the adoption of a uniform system of accounts for cable companies that closely resembles Class B accounting for telephone companies. The Commission should continue its positive momentum by initiating another proceeding to determine the extent to which accounting requirements could be further simplified for both telephone and cable companies.

In the area of affiliate transaction rules, the Commission suggests that the same rules applicable to telephone companies be imposed upon cable companies. However, the Commission would include additional provisions in the cable rules that are merely proposed -- not adopted -- for telephone companies. Those changes are now pending in a rulemaking proceeding on transactions between common carriers and their nonregulated affiliates.[2] USTA and its member companies demonstrated in their comments in the Affiliate Transaction Docket that the additional and burdensome requirements proposed there are unnecessary and

[2]See Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and Their Nonregulated Affiliates, CC Docket 93-251, Notice of Proposed Rulemaking released October 20, 1993 (Affiliate Transaction Docket).

contrary to the public interest. We urge the Commission not to prejudge its decision in that docket by adopting those additional rules for cable companies.

II. COST ALLOCATION REQUIREMENTS FOR AFFILIATE TRANSACTIONS

The Commission first adopted cost allocation standards for local exchange carriers and dominant interexchange carriers in 1987. At the time, the Commission indicated that the function of its rules was to separate the costs of regulated telephone service from those of nonregulated activities. The FCC wished to ensure that carriers were not imposing the costs and risks of nonregulated activities on ratepayers. In addition, the FCC adopted a fully distributed cost methodology on the theory that ratepayers should benefit from any economies of scale and scope carriers possess by virtue of engaging in nonregulated activities. The rules were implemented by the carriers on January 1, 1988. The Commission has now accumulated over six years of experience in applying and monitoring compliance with the telephone cost allocation rules. With very few refinements, the Commission has found its rules sufficient to achieve its regulatory objectives.

One aspect of the cost allocation requirements the Commission proposes to apply to cable companies governs transactions between cable companies and nonregulated affiliates. In this area, the Commission has proposed that the method currently used by telephone companies for valuing assets in affiliate transactions be extended to the valuation of services by cable companies. The FCC has proposed the same expansion of the asset valuation rules for telephone companies in the Affiliated Interests Docket. Thus, telephone companies and cable companies would have to obtain an estimate of the fair market value of each and every such service and compare that to the fully distributed cost. The service would then be recorded at the amount most favorable to the ratepayer.

USTA's preliminary research shows that it would cost an average of 40,000 dollars to obtain an estimated fair market value for a particular affiliate transaction. This would translate to a cost for Tier 1 telephone companies alone of approximately $91 million. The Commission's proposal also assumes that estimated fair market value information will be available for all services. As a number of cable companies pointed out in this docket, that assumption is probably erroneous.

By suggesting that this fair market value requirement be adopted for cable companies, the Commission may have pre-judged the merits of its proposal in the Affiliate Transaction Docket. In its comments and reply comments filed there, USTA not only showed that obtaining fair market value estimates would dramatically increase the cost of compliance with the rules, we highlighted the fact that the Commission has not demonstrated that any ratepayer benefit or perceived public interest outweighs the additional burdens of compliance.

The current affiliate transaction rules for telephone companies permit the use of a "prevailing price" if a carrier has substantial sales to non-affiliated customers.

USTA strongly maintains that these non-affiliated customers will pay only a reasonable price for services in such an arms-length transaction. Indeed, an actual price agreed between a willing seller and a willing buyer is a more accurate assessment of fair market value than would a fair market appraisal such as that proposed by the FCC and discussed above. No evidence has been cited to indicate that the Commission's "prevailing price" rules are in any way inadequate, yet for both telephone and cable companies, the Commission now proposes a "bright line" test, under which 75% of services must be provided to non-affiliates before the "prevailing price" can be used.

The prevailing price method has been demonstrated in the context of telephone company regulation to be a reasonable means of dealing with affiliate services concerns. In fact, the FCC's "bright line" proposal would harm ratepayer interests by decreasing the use of the prevailing price method. If the "bright line" were adopted, the hurdle for using prevailing prices would be so high that, in practice, prevailing prices would seldom be used. Therefore, USTA again urges the Commission to abandon its 75% "bright line" proposal for both the telephone and cable rules.

III. ACCOUNTING REQUIREMENTS

The Commission believes that it must be able to obtain accurate records of cable companies' revenues, operating expenses, depreciation and investment. Consequently, the Commission proposes adoption of a uniform accounting system, which is similar to the Class B telephone company requirements of 43 CFR 32. However, this requirement would apply only to the cable companies that elect cost-of-service regulation, and cable companies that elect benchmark/Price Cap regulations would be exempt from the uniform system of accounts requirement.

USTA believes that a requirement for "cost-of-service" cable companies to maintain only a summary-level system of accounts is in the public interest. However, USTA also believes the Commission should regulate the telephone and cable industries with parity in any matter where that approach is workable. Despite the onset of competition between cable and telephone companies in Rochester, New York and other markets, the Commission's proposed accounting requirements for cable companies are far less burdensome and costly than those for many telephone companies. This lack of parity is particularly troublesome when cable companies begin offering telephone service. To level the playing field, the Commission should initiate a proceeding aimed at reducing the accounting requirements for telephone companies to the level it determines appropriate for cable companies in this proceeding. USTA believes that a truly market-based communications environment can emerge only with regulatory frameworks that will allow for fair competition.

IV. REGULATION OF SMALL CABLE COMPANIES

The FCC has a consistent history of reducing the regulatory burden on small telephone companies. Indeed, the FCC initiated proceedings in 1986 and again in

1992 in furtherance of its goal to seek effective ways to regulate these companies while eliminating any unnecessary requirements.[3] USTA urges the Commission to adopt a similar goal for small cable companies. It might wish to simultaneously examine this issue of streamlined regulation for small telephone companies and cable companies.

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August 1, 1994

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[3] See, e.g., Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, Notice of Proposed Rulemaking, 7 FCC Rcd 5023 (1992) and Regulation of Small Telephone Companies, Report and Order, 2 FCC Rcd. 3811 (1987).

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on August 1, 1994 copies of the Reply Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

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